

Water Quality Standards (WQS)



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Idaho Department of
Environmental Quality

January 2005

Today's Agenda

- ✓ The Clean Water Act (CWA)
- ✓ State Law & DEQ Authority
- ✓ Rulemaking & EPA Oversight
- ✓ Idaho WQS (The Results)

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- Scope of what we are covering today
- Because WQS (rules) have the “force and effect of law”, we need to first understand their purpose, their legal basis.
- I am going to start by out by looking at the Federal Clean Water Act and with some unavoidable reference to Idaho
- Then Cyndi will briefly turn to Idaho law and the authorities that DEQ has been given, and how that fits into a federal-state partnership set up by the CWA.
- Then we will have short break (10 min)
- After that, Cyndi is we are going to examine the process in Idaho for getting WQS into rule, and EPA's oversight role
- Finally I will get into he major components of Idaho's WQS, but not a lot of detail. The results of a DEQ/EPA partnership.

Rulemaking In Idaho



Partnership
Rulemaking Process

Agenda

1. Types of Rules
2. Simple Flowchart
3. Example Timeline
4. Rulemaking Moratorium
5. Where to Find the WQ Rules

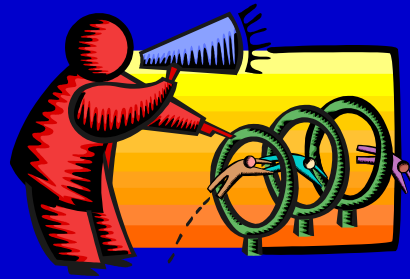
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Now lets talk about some Idaho specifics when it comes to rulemaking ... how we come up with what is in that briefcase.

Types of Rules

- Negotiated Rulemaking
- Temporary Rule
- Proposed Rule
- Pending Rule
- Final Rule

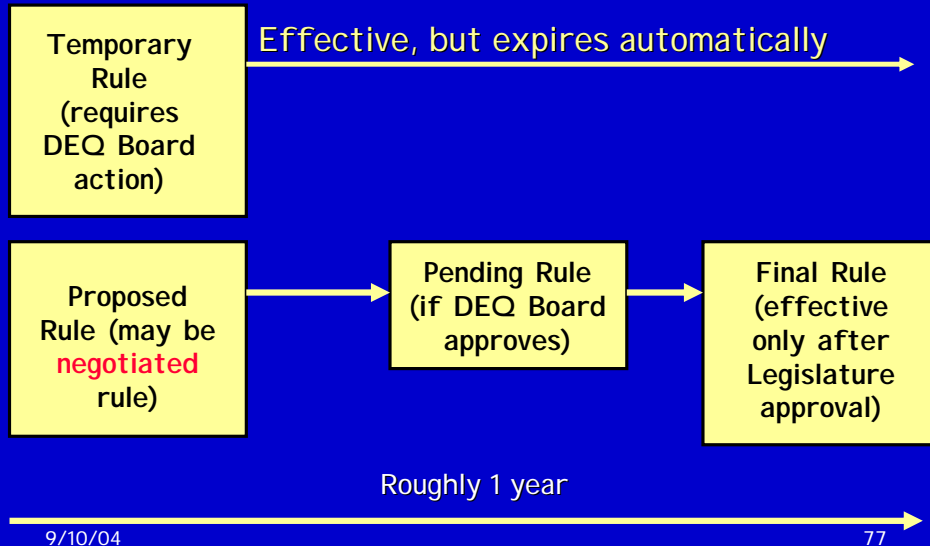


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We are going to spend a slide on each of these.

Rulemaking Oversimplified



Pretty simple right? Not so simple.... We will talk about specifics of each of the four varieties of rules in Idaho.

Notice is needed for each type of rule in the Idaho Administrative Bulletin

Official process begins with a PARF – Proposed Administrative Rule Form needing buyoff from the Governor and our Director.

Negotiated Rulemaking

- Optional informal process among interested parties and DEQ to seek consensus on rule content.
- Process may lead to a proposed rule.
- DEQ's policy is to encourage this process, whenever feasible.



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DEQ notices negotiated rulemaking by policy – though it is not a requirement of the Idaho Administrative Procedures Act.

Although it is acceptable under law to negotiate with selected parties, one on one, it is also DEQ policy to involve all parties, and hold public meetings for purpose of negotiations.

The negotiations may end in a proposed rule, or just end.

Temporary Rule

- Governor determines need and benefit for temporary adoption
- Effective upon adoption by DEQ Board
- Expires upon conclusion of next succeeding regular legislative session (unless extended)

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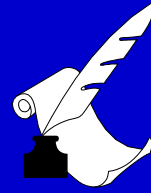
Temporary rules are somewhat insidious, they become effective with no public input and are noticed after the fact.

They are very much discouraged

Not all agencies have to a Board... yet another thing that sets Idaho DEQ apart and adds time to our rulemaking process.

Automatically expire unless extended by concurrent resolution. Because of this usually accompanied by a proposed, then pending, then final.

Proposed Rule



- DEQ proposes to amend or repeal existing rule or adopt a new rule
- Must progress to a pending rule before becoming final

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Public notice of rules is in the Idaho Admin Bulletin, published the first Wednesday of each month and selected papers statewide. Also available on DEQ web page.

May be result of negotiated rulemaking or agencies own proposal.

DEQ is not required to respond directly to public commenters, but we are required to consider public comment and provide DEQ's Board, and later EPA, a summary of comments and responses.



Pending Rule



- A rule that has been adopted by DEQ board and is pending legislative review before it becomes final and effective
- Must be rejected by both houses of state legislature to fail

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You should be asking: Pending What?

Legislative review and approval. This is the only type of rule that legislature considers for finalization.

If a rule varies in content from initial proposal, the pending rule language shall accompany the notice in the Idaho Administrative Bulletin.

Requires DEQ Board action, that is a proposed rule may never become a pending rule (in the good old days before 1996 this was it, proposed rules became final or not, none of this pending stuff)



Final Rule

- A pending rule submitted for review and not disapproved by both houses of the legislature becomes final
- Effective upon conclusion of that legislative session (unless ...)
- Codified in the Idaho Administrative Code (cited as IDAPA), published annually
- So ... the best source is on the Web

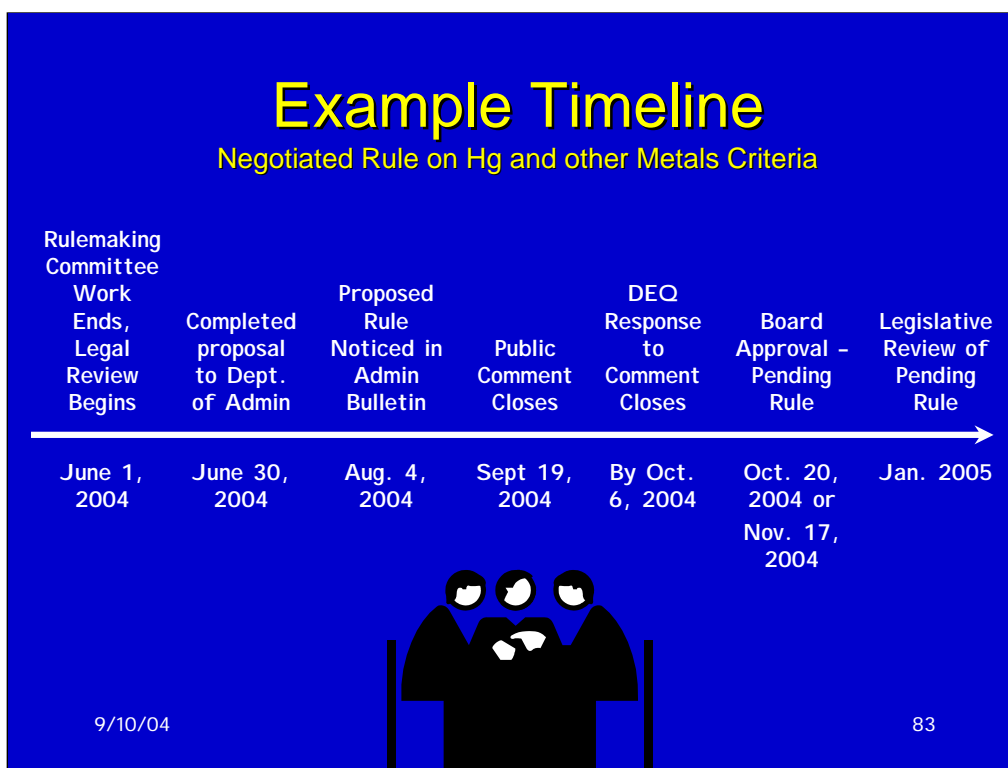
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Technically legislature does not actually approve rules, rather they must decide to kill them and this requires agreement of both chambers of the legislature (concurrent resolution)

If rule is not killed, or legislature does not act, a pending rule becomes final.

Final rules are published once again in the Administrative Bulletin and become effective at the close of the legislative session unless otherwise specified.



This is an example timeline for DEQ (based on rule for Hg and other criteria). Takes into account time for notice (twice), public comment and response, consideration by DEQ Board.

Public hearings on proposed rules is not required but may be requested. In this case we scheduled a public hearing – proactively to avoid a late request throwing us off schedule.

This timeline does not include negotiation time, which began the previous fall, or subsequent legislative and EPA approval time. It only shows the formal administrative rulemaking steps.

However...

- Timeline does not include the time it takes to negotiate a proposed rule or for DEQ to draft up a temporary rule
- There is a moratorium on rulemaking while the legislature is in session (meaning, you miss your deadline by a day, you miss it by a year... 'til next April!)



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There is a Moratorium on rulemaking while the legislature is in town, end of Nov until end of following session.

Effectively a proposed rule need to get in Aug Bulletin, Sept at latest, to make next legislative session as a pending rule.

Thus the real window for proposing rules begins in late March or early April and goes possibly through July (about 4 months)

Web site...

<http://www2.state.id.us/adm/adminrules/rules/idapa58/0102.pdf>



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Here is where to get your very own copy of the rules, and the only place to find the latest changes compiled

You need to check the web regularly as standards can change anytime (e.g. temporary rules)